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SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-77394; File No. SR-BatsEDGX-2016-02)

March 17, 2016

Self-Regulatory Organizations; Bats EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use of the Exchange

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on March 17, 2016, Bats EDGX Exchange, Inc. f/k/a EDGX Exchange, Inc. (the “Exchange” or “EDGX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act<sup>3</sup> and Rule 19b-4(f)(2) thereunder,<sup>4</sup> which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members<sup>5</sup> and non-members of the Exchange pursuant to EDGX Rules 15.1(a) and (c) (“Fee Schedule”) to: (i)

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> 15 U.S.C. 78s(b)(3)(A)(ii).

<sup>4</sup> 17 CFR 240.19b-4(f)(2).

<sup>5</sup> The term “Member” is defined as “any registered broker or dealer that has been admitted to membership in the Exchange.” See Exchange Rule 1.5(n).

increase the rebate for Retail Orders<sup>6</sup> that yield fee code ZA; (ii) delete the Retail Order Tier under footnote 4; (iii) amend or delete various Add Volume Tiers under footnote 1; and (iv) amend the Tape B Step Up Tier under footnote 2.

The text of the proposed rule change is available at the Exchange's website at [www.batstrading.com](http://www.batstrading.com), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fee Schedule to: (i) increase the rebate for Retail Orders that yield fee code ZA; (ii) delete the Retail Order Tier under footnote 4; (iii) amend or delete various Add Volume Tiers under footnote 1; and (iv) amend the Tape B Step Up Tier under footnote 2.

Fee Code ZA and the Retail Order Tier

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<sup>6</sup> A "Retail Order" is "an order that: (i) is an agency order or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person; (ii) is submitted to EDGX by a Member, provided that no change is made to the terms of the order; and (iii) does not originate from a trading algorithm or any other computerized methodology." See Exchange Rule 11.24(a).

The Exchange proposes to increase the rebate for Retail Orders that yield fee code ZA and delete the Retail Order Tier under footnote 4.<sup>7</sup> First, the Exchange proposes to increase the rebate for Retail Orders that yield fee code ZA from \$0.0032 per share to \$0.0034 per share. Fee code ZA is appended to Retail Orders that add liquidity on the Exchange. In a related change, the Exchange proposes to delete the Retail Order Tier under footnote 4.<sup>8</sup> Currently, under the Retail Order Tier, a Retail Order that yields fee code ZA will receive a rebate of \$0.0034 per share where that Member adds Retail Orders that average at least 0.07% of TCV.<sup>9</sup> Going forward, Members would receive a receive rebate of \$0.0034 per share for their Retail Orders that yield fee code ZA without having to satisfy certain add volume criteria. Providing all Retail Orders that yield fee code ZA a rebate of \$0.0034 per share would mirror the rebate currently provided by the Nasdaq Stock Market LLC (“Nasdaq”).<sup>10</sup>

#### Add Volume Tiers – Footnote 1

Currently, the Exchange determines the liquidity adding rebate that it will provide to Members using the Exchange’s tiered pricing structure. Under such pricing structure, a Member will receive a rebate of anywhere between \$0.0025 and \$0.0035 per share executed, depending on the volume tier for which such Member qualifies. The Exchange currently offers thirteen separate Add Volume Tiers under footnote 1 of its Fee schedule which provide various enhanced

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<sup>7</sup> Footnote 4 would continue to note that Members will only be able to designate their orders as Retail Orders on either an order-by-order basis using FIX ports or by designating certain of their FIX ports at the Exchange as “Retail Order Ports.”

<sup>8</sup> As a result of deleting the Retail Order Tier under footnote 4, the Exchange proposes to delete a reference to footnote 4 in the Standard Rates table of its Fee Schedule.

<sup>9</sup> As defined in the Exchange’s Fee Schedule.

<sup>10</sup> See Nasdaq Price List – Trading Connectivity [available at](http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2) <http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2> (offering a rebate of \$0.0034 per share to add displayed designated retail liquidity).

rebates based on the Members satisfying certain monthly volume thresholds. The Exchange now proposes to amend or delete various tiers under footnote 1 in order to update, streamline, and simplify its tiered pricing structure.

*Tiers to be Deleted*

First, the Exchange proposes to delete the Market Depth Tier 1 and Market Depth Tier 2. Under the Market Depth Tier 1, a Member receives a rebate of \$0.00325 per share when that Member adds an ADV<sup>11</sup> of at least 0.85% of the TCV; and adds an ADV of at least 4,000,000 shares as non-displayed orders that yield fee code HA.<sup>12</sup> Under the Market Depth Tier 2, a Member receives a rebate of \$0.0029 per share when that Member adds an ADV of at least 10,000,000 shares; and adds an ADV of at least 1,000,000 shares as Non-displayed orders that yield fee code HA. The Exchange believes deleting the Market Depth Tier 1 and the Market Depth Tier 2 is reasonable as Members would be able to receive similar rebates by achieving other tiers without the additional requirement of adding a certain volume of non-displayed orders.

In addition, the Exchange proposes to delete Mega Step-Up Tier 1, Mega Step-Up Tier 2, and Mega Step-Up Tier 3. Under Mega Step-Up Tier 1, a Member receives a rebate of \$0.0032 per share when they add: (i) an ADV of at least 0.12% of the TCV more than the Member's added ADV from February 2011; and (ii) an ADV of at least 0.35% of the TCV. Under Mega Step-Up Tier 2, a Member receives a rebate of \$0.0030 per share when they add an ADV of at least 0.12% of the TCV more than the Member's added ADV from February 2011. Lastly, under Mega Step-Up Tier 3, a Member receives a rebate of \$0.0028 per share when they add an ADV

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<sup>11</sup> As defined in the Exchange's Fee Schedule.

<sup>12</sup> Fee code HA is appended to non-displayed orders that add liquidity.

of at least 0.065% of the TCV more than the Member's added ADV from February 2011. Each of these tiers require a Member add more liquidity than their added ADV from February 2011. The Exchange believes that each of these tiers have served their intended purpose of encouraging Members to increase their trading activity on the Exchange from a February 2011 baseline. In addition, the Exchange believes that these tiers have become outdated by utilizing a baseline ADV that is approximately five years old. Therefore, the Exchange proposes to delete Mega Step-Up Tier 1, Mega Step-Up Tier 2, and Mega Step-Up Tier 3 from footnote 1 of its Fee Schedule.

*Amendments to Mega Tiers 1, 2, and 3*

The Exchange also proposes to amend the rebate and/or required criteria for the Mega Tier 1, Mega Tier 2, and Mega Tier 3. The Exchange proposes to amend Mega Tiers 1 and 3 by decreasing the applicable rebate and simplifying the criteria required to meet the tier. Under Mega Tier 1, a Member currently receives a rebate of \$0.0035 per share where they satisfy the following three criteria: (i) add or route a combined ADV of at least 4,000,000 shares prior to 9:30 AM or after 4:00 PM; (ii) add an ADV of at least 35,000,000 shares, including during both market hours and pre and post-trading hours; and (iii) has an "added liquidity" as a percentage of "added plus removed liquidity" of at least 85%. First, the Exchange proposes to simplify the criteria necessary to meet the tier by replacing the above three requirements with a single requirement that the Member add an ADV of at least 0.75% of TCV. Second, to reflect the simplified criteria, the Exchange proposes to decrease the rebate offered under Mega Tier 1 from \$0.0035 per share to \$0.0032 per share.

Under Mega Tier 3, a Member currently receives a rebate of \$0.0032 per share where they satisfy the following two criteria: (i) add or route a combined ADV of at least 1,500,000

shares prior to 9:30 AM or after 4:00 PM; and (ii) add an ADV of at least 0.75% of the TCV, including during both market hours and pre and post-trading hours. First, the Exchange proposes to simplify the criteria necessary to meet the tier by replacing the above two requirements with a single requirement that the Member add an ADV of at least 0.45% of TCV. Second, to reflect the tier's simplified criteria, the Exchange proposes to decrease the rebate offered by Mega Tier 3 from \$0.0032 per share to \$0.0031 per share.

The Exchange also proposes to increase the criteria necessary to achieve Mega Tier 2. Under Mega Tier 2, a Member currently receives a rebate of \$0.0032 per share where they: (i) add or route a combined ADV of at least 4,000,000 shares prior to 9:30 AM or after 4:00 PM; and (ii) adds an ADV of at least 0.20% of the TCV, including during both market hours and pre and post-trading hours. The Exchange proposes to amend the second requirement under Mega Tier 2 by increasing the add ADV from at least 0.20% of the TCV to at least 0.65% of TCV, including during both market hours and pre and post-trading hours. The Exchange believes the amendment to Mega Tier 2 is reasonable because increasing the criteria necessary to meet the tier reflects the amount of the rebate provided as compared to that necessary to achieve the next best tier, Mega Tier 1.

#### *Amendments to the Ultra Tier, Super Tier, Growth Tier, and Investor Tier*

The Exchange also proposes to amend the Ultra Tier, Super Tier, Growth Tier, and Investor Tier by altering the tiers' rebate and/or required criteria in order to incorporate a tiered rebate structure that is in relation to the Member's added ADV of at least a certain percentage of TCV. First, under the Ultra Tier, a Member receives a rebate of \$0.0031 per share where they add an ADV of at least 0.50% of the TCV. The Exchange proposes to ease the criteria necessary to meet the tier by reducing the add ADV requirement to be at least 0.30% of TCV, rather than

0.50% of TCV. To reflect the easing of the tier's required criteria, the Exchange also proposes to decrease the rebate offered by the Ultra Tier from \$0.0031 per share to \$0.0030 per share.

Under the Super Tier, a Member receives a rebate of \$0.0028 per share where they add an ADV of at least 10,000,000 shares. The Exchange proposes to amend the tier to require that the Member add an ADV of at least 0.15% of the TCV, rather than 10,000,000 shares.

Under the Growth Tier, a Member receives a rebate of \$0.0025 per share where they add an ADV of at least 5,000,000 shares. The Exchange proposes to amend the tier to require that the Member add an ADV of at least 0.08% of the TCV, rather than 5,000,000 shares.

Lastly, under the Investor Tier, a Member receives a rebate of \$0.0032 per share where they satisfy the following two criteria: (i) adds an ADV of at least 0.15% of the TCV; and (ii) has an "added liquidity" as a percentage of "added plus removed liquidity" of at least 85%. The Exchange proposes to amend the second requirement under the Investor Tier by increasing the add ADV from at least 0.15% of the TCV to at least 0.20% of TCV.

#### Tape B Step Up Tier

Under the Tape B Step Up Tier, Member's orders yielding fee codes B<sup>13</sup> or 4<sup>14</sup> receive a rebate of \$0.0027 per share where that Member adds an ADV of at least 600,000 shares in Tape B securities more than the Member's added ADV in Tape B Securities from August 2013. First the Exchange proposes to rename the Tape B Step Up Tier as the Tape B Volume Tier. Second, the Exchange proposes to update the criteria necessary to achieve the tier by removing the requirement that the Member add an ADV of at least 600,000 shares in Tape B securities more than the Member's added ADV in Tape B Securities from August 2013. Instead, the Exchange

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<sup>13</sup> Fee code B is appended to orders in Tape B securities that add liquidity.

<sup>14</sup> Fee code 4 is appended to orders in Tape B securities that add liquidity during the pre and post market.

would require that the Member add an ADV of at least 0.02% of TCV in Tape B securities. The Exchange believes that the tier's current criteria has served its intended purpose of encouraging Members to increase their trading activity on the Exchange in Tape B securities from an August 2013 baseline. In addition, the Exchange believes that this tier has become outdated by utilizing a baseline that is approximately two and a half years old and that the proposed criteria reflects a volume requirement reasonably related to the amount of the available rebate.

#### Implementation Date

The Exchange proposes to implement this amendment to its Fee Schedule immediately.<sup>15</sup>

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>16</sup> in general, and furthers the objectives of Section 6(b)(4),<sup>17</sup> in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed tier is equitable and non-discriminatory in it would apply uniformly to all Members. The Exchange believes the rates remain competitive with those charged by other venues and,

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<sup>15</sup> The Exchange initially filed the proposed fee change on March 1, 2016 (SR-EDGX-2016-15). On March 9, 2016, the Exchange withdrew SR-EDGX-2016-15 and submitted SR-EDGX-2016-17. On March 17, 2016, the Exchange withdrew SR-EDGX-2016-17 and submitted this filing.

<sup>16</sup> 15 U.S.C. 78f.

<sup>17</sup> 15 U.S.C. 78f(b)(4).



therefore, reasonable and equitably allocated to Members.

Volume-based rebates such as that proposed herein have been widely adopted by equities exchanges and are equitable because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to: (i) the value to an exchange's market quality; (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns; and (iii) introduction of higher volumes of orders into the price and volume discovery processes. The Exchange believes that the proposed tier revisions are a reasonable, fair and equitable, and not unfairly discriminatory allocation of fees and rebates because they will provide Members with an additional incentive to reach certain thresholds on the Exchange.

In particular, the Exchange believes the proposed revisions to footnote 1 are equitable, reasonable, and not unfairly discriminatory as they are designed to amend or delete various tiers resulting in an updated, streamlined, and simplified tiered pricing structure. As noted above, the Exchange currently offers thirteen separate tiers under footnote 1 of its Fee Schedule. Under the proposed rule change, the number of tiers offered under footnote 1 would decrease by nearly 50% from thirteen to seven. The Exchange believes that is reasonable to delete Mega Step-Up Tiers 1, 2, and 3 because it believes each of these tiers have served their intended purpose of encouraging Members to increase their trading activity on the Exchange from a February 2011 baseline. In addition, the Exchange believes that these tiers have become outdated by utilizing a baseline ADV that is approximately five years old. In addition, the Exchange believes deleting the Market Depth Tier 1 and the Market Depth Tier 2 is equitable, reasonable, and not unfairly discriminatory as Members would be able to receive similar rebates by achieving other tiers

without the additional requirement of adding a certain volume of non-displayed orders.<sup>18</sup>

In addition, the Exchange believes its proposed changes to Mega Tier 1 and 3 are equitable, reasonable, and not unfairly discriminatory as they are designed to decrease the applicable rebate to reflect the proposed simplification of the criteria required to meet the tiers. The Exchange also believes the amendment to Mega Tier 2 is equitable, reasonable, and not unfairly discriminatory as increasing the criteria necessary to meet the tier reflects the amount of the rebate provided as compared to that necessary to achieve the next best tier, Mega Tier 1. In addition, the proposed amendments to the Ultra Tier, Super Tier, Growth Tier, and Investor Tier are designed to incorporate a rebate structure that is in relation to the Member's added ADV of at least a certain percentage of TCV. The Exchange believes that these incentives are reasonable, fair and equitable because the liquidity from each of these proposals also benefits all investors by deepening the Exchange's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. Such pricing programs thereby reward a Member's growth pattern and such increased volume increase potential revenue to the Exchange, and will allow the Exchange to continue to provide and potentially expand the incentive programs operated by the Exchange.

The Exchange also believes that its proposed revision to the Tape B Step Up Tier is also equitable, reasonable and not unfairly discriminatory. The tier as currently constructed has served its intended purpose of encouraging Members to increase their trading activity on the Exchange in Tape B securities from an August 2013 baseline. In addition, the Exchange

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<sup>18</sup> See Mega Tier 2 under footnote 1 of the Fee Schedule (offering a rebate of \$0.0032 per share), and the Super Tier under footnote 1 of the Fee Schedule (offering a rebate of \$0.0028 per share).

believes that this tier has become outdated by utilizing a baseline that is approximately two and a half years old. The Exchange also believes the proposed amendment to the Tape B Step Up Tier is a reasonable means to encourage Members to increase their liquidity in Tape B securities. The Exchange also believes providing a rebate of \$0.0027 per share where a Member's Tape B ADV as a percentage of TCV is equal to or greater than 0.02% is also equitable and reasonable. Such pricing rewards a Member's growth pattern in Tape B securities and such increased volume, in turn, results in increased potential revenue to the Exchange, allowing the Exchange to continue to provide and potentially expand the incentive programs operated by the Exchange.

Lastly, the Exchange believes that increasing the rebate for Retail Orders that yield fee code ZA and delete the Retail Order Tier under footnote 4 represents an equitable allocation of reasonable dues, fees, and other charges because providing a uniform rebate for Retail Orders would encourage Members to send additional Retail Orders that add liquidity to the Exchange without having to meet certain volume requirements. The increased liquidity benefits all investors by deepening the Exchange's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. Lastly, the proposed rebate of \$0.0034 per share for all Retail Orders is reasonable because it mirrors the rebate currently provided by Nasdaq.<sup>19</sup>

**B. Self-Regulatory Organization's Statement on Burden on Competition**

The Exchange does not believe the proposed amendment to its Fee Schedule would impose any burden on competition that is not necessary or appropriate in furtherance of the

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<sup>19</sup> See Nasdaq Price List – Trading Connectivity available at <http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2> (offering a rebate of \$0.0034 per share to add displayed designated retail liquidity).

purposes of the Act. The Exchange does not believe that the proposed change represents a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

The Exchange does not believe that the proposed tier revisions would burden competition, but instead, enhances competition, as they are intended to increase the competitiveness of and draw additional volume to the Exchange. As stated above, the Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee structures to be unreasonable or excessive. The proposed changes are generally intended to update, simplify, and streamline the Exchange's tiered pricing structure, which the Exchange designed to attract additional liquidity. The Exchange believes that the proposed tier revisions will allow the Exchange to compete more ably with other execution venues by drawing additional volume to the Exchange, thereby making it a more desirable destination venue for its customers. The Exchange does not believe the proposed tier revisions would burden intramarket competition as they would apply to all Members uniformly.

Regarding the Retail Orders, the Exchange believes that its proposal to provide a uniform rebate to all Retail Orders will increase intermarket competition for Retail Orders because the proposed would mirror the rebate currently provided by Nasdaq.<sup>20</sup> The Exchange believes that

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<sup>20</sup> See Nasdaq Price List – Trading Connectivity available at <http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2> (offering a rebate of \$0.0034 per share to add displayed designated retail liquidity).

its proposal would neither increase nor decrease intramarket competition because the rebate would apply uniformly to all Members.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>21</sup> and paragraph (f) of Rule 19b-4 thereunder.<sup>22</sup> At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-BatsEDGX-2016-02 on the subject line.

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<sup>21</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>22</sup> 17 CFR 240.19b-4(f).

Paper Comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-BatsEDGX-2016-02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer

to File Number SR-BatsEDGX-2016-02, and should be submitted on or before [INSERT DATE 21 DAYS FROM PUBLICATION IN THE FEDERAL REGISTER].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

Robert W. Errett  
Deputy Secretary

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<sup>23</sup> 17 CFR 200.30-3(a)(12).

